say that this adherence to the former rule upon this important subject, by a court of so much weight of authority, is gratifying upon more than one account. It gives hope that the frequency of this class of actions and the tendency with juries to hold the municipalities responsible, will not have the effect to lead all courts to so far restrict the extent of that responsibility by constructions as to virtually destroy the beneficial effects of the statutes upon the subject. And we trust it may not be regarded as entirely inadmissible to say that it affords great support to one travelling down the western declivity of life to find some assurances, as he passes along, that all the lights of his life have not become extinguished before he reaches his journey's end. I. F. R.

Supreme Court of New Jersey.

WILLIAM J. LYND *v.* GEORGE MENZIES, JOHN H. SUYDAM, AND OTHERS.[1]

A minister of the Protestant Episcopal Church has either the possession of the church edifice or a right in the nature of an easement to enter therein, on all occasions set apart in the parish for divine services, and a substantial interference with such right will lay the ground for an action at law.

The English ecclesiastical law forms the basis of the law regulating the affairs of this denomination of Christians.

In order to vest the pastor with the ordinary rights in the temporalities pertaining to his office it is not necessary for the congregation to be incorporated, nor that the title to the church should be lodged in such congregation.

A Protestant Episcopal minister was barred out of the church building on a Sunday, by his wardens and vestrymen: *Held*, that a verdict for substantial damages for such act, in a suit by the minister, should not be disturbed.

THIS was an action on the case for forcibly preventing a minister from preaching in the church and occupying the parochial school-house. Upon the trial the following facts were elicited: By a deed dated 1st October 1853, Cyrus Peck and wife conveyed the lot upon which the church and school-house are now erected, to the Rectors, Wardens, and Vestrymen of the Church of St. Barnabas, Roseville, in the city of Newark, in fee, upon the condition that a church and school-house should be erected thereon, and which church edifice should be consecrated, appropriated, and devoted for ever exclusively to the service of Almighty God, according to the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America. At the time

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[1] We are indebted for this case to Charles Borcherling, Jr., Esq., plaintiff's counsel.—EDS. AM. LAW REG.

of this conveyance the said church was not incorporated, and did not become so until after the expulsion of the minister, as hereinafter stated.

On the 23d July, 1855, this church was consecrated by the bishop of the diocese of New Jersey, and from that time forward the congregation continued its organization. In December, 1861, the plaintiff accepted a call to the rectorship of this church, and in the month of June, 1862, was duly instituted. It appeared that the plaintiff, in common with the other officers of the church, supposed the church had been incorporated and that various corporate acts were performed. Before his call, the church had claimed and been conceded ecclesiastical rights which pertained to incorporated churches only; after the call of the plaintiff, a school-house was put up on the church lot, and he was placed in possession. On the 27th April, 1867, the plaintiff received a note from two of the defendants, who were the wardens of the church, notifying him that on Easter Day, which was then passed, his connection as rector with the church had ceased. On the next day, which was Sunday, when the plaintiff went to the church to officiate he found the church closed, the doors being fastened, so as to prevent his entering. In a few days afterwards he was in a similar manner excluded from the school-house. It was proved that such expulsions were the acts of the defendants, two of whom were wardens and the others vestrymen of the church. The question of law as to the right of the plaintiff to recover was reserved, and the matter of damages submitted to the jury, who returned a verdict for $1000.

The case came before this court on a motion for a new trial.

C. Parker and *Charles Borcherling, Jr.*, for plaintiff.

Joseph P. Bradley, for defendants.

BEASLEY, C. J.—The motion for a new trial in this case is rested on two grounds, viz.: first, that the proofs will not sustain an action at law; second, that the damages are excessive.

On the first of these heads the ground taken is, that at the time when the plaintiff became the rector of this congregation, and also at the time of the transaction complained of, the congregation was not incorporated. From this fact it was urged that the title under the deed from Mr. Peck could not pass out of him for the

want of a competent grantee to take it, and that the members of the congregation were in possession of these premises as tenants in common by sufferance, and that, consequently, such rights in the realty as ordinarily pass to the rector under a regular organization, did not in the present case vest.

So far as the law has to do with the relationship of the rector with his flock, such relationship is to be regarded as the effect of a contract.

What then is the agreement into which a congregation of this denomination of Christians enters upon the call of a rector? So far as touches the matter in controversy, it plainly appears to be this: They offer to the minister receiving the call such rights in their temporalities as by the ecclesiastical law of their sect belong to the office which is tendered, one of such rights being that of preaching on Sundays in the church provided by the congregation. Such an offer, therefore, can have nothing to do with the title to the church edifice. No matter in whom the title may reside, if the congregation has the use of the building, the rector must of necessity have the right to partake in such use. The agreement is not, as the argument on the part of the defendants assumed, that the rector is to possess this class of privileges in these temporalities of which the congregation is the absolute owner. But to the contrary, whatever place the congregation provide for the purpose of public worship in the parish, into such place the rector, by virtue of his office, has the right to enter in order to conduct such worship. I have failed, therefore, to perceive how the fact of title to the church premises in question is to affect the legal result in this case; in the view which I take of the understanding between these parties, it cannot matter at all whether or not the congregation had any interest in these premises other than a right to the occupation of them for the purpose of Divine service on the Sunday of the expulsion; because, if on that occasion this building was the place set apart by the congregation for their religious exercises, then it necessarily follows that the plaintiff at that time, *virtute officii*, had the legal right to be present and to conduct the worship. But the case in reality is much stronger in favor of the plaintiff than this. This church property was put into the possession of this congregation for their denominational uses by Mr. Peck, the owner of the fee; they had erected their church upon it, and thus complied with the conditions of the grant; it is true

the title at law was defective, but it is also true that their title in equity was complete. This church, thus built, had been consecrated by the bishop of the diocese, and by institution, performed with all due ecclesiastical formalities, the plaintiff had been placed in charge of the spiritual affairs of the church; the congregation remained in full possession of the church edifice, and neither Mr. Peck nor any one else called such possession in question. Under the circumstances, how is it possible that these defendants, who claim to be the representatives of the congregation, can deny the rights of the rector as to these premises on the ground of the inferiority of their own title? Suppose we regard them as mere tenants at sufferance, will that fact enable them to put an end to the rights of the plaintiff in this property? If such were their position, the only effect would be to make both their own rights and those of the rector dependent on the will of the owner of the land. But it certainly would be contrary to all principle to permit a party in possession of real property to grant an interest in it to another, and then defeat such interest on the ground of his own inability to make such grant. The rule that a party cannot derogate from his own grant is one of universal efficacy, and applies in a very direct manner to the present case; nor is there anything in the suggestion that the usual rights touching the temporalities which vest in the rector, could not be obtained by him in the present instance, on account of the imperfection of the ecclesiastical organization of this congregation; the imperfection relied on was the absence of an incorporation. But the want of this quality does not at all affect the rights and duties of pastor and people towards each other; the effect of becoming incorporated is to facilitate the acquisition and transfer of property, and to enable the congregation to be represented in the convention of the diocese: Article V. of Constitution of P. E. C. of Diocese of New Jersey. But, by the canonical law of this denomination of Christians, it is not necessary, in order to constitute a church, that the congregation should take the form of an incorporated body. Indeed, the very law of this state, which provides for the incorporation of this class of churches, presupposes, and requires, that there shall be antecedent to the inception of proceedings "a congregation of the Protestant Episcopal Church in this state duly organized, according to the constitution and usages of said church:" Act of 1829. In the case now before us, it plainly

appears that this church was constituted in conformity to the ecclesiastical law and usages applicable to it; and the consequence is, that the plaintiff, by his official connection with it, acquired all the customary powers and privileges pertaining to the rectorship.

But there was a second objection taken on the argument, which was, that on the assumption of the existence of the right of the rector to the privileges claimed by him, still it was said, an innovation or disturbance of such rights would not constitute the ground of a suit at law.

I cannot yield my assent to this proposition. The nature of the right in question forbids such a result. I think it is clear that, in right of his office, a rector, by force of the law of this church, has either the possession of the church edifice, or has a privilege which enables him to enter into it—such privilege being in the nature of an easement. Mr. Murray Hoffman, in his learned and interesting treatise on the law of the Protestant Episcopal Church in the United States, page 266, in remarking on the effect of the incorporation of churches, states his views in these terms, viz.: "The title then to the church and all church property is in the trustees, collectively, for all corporate purposes; but there is another class of purposes purely ecclesiastical, as to which the statute did not mean to interfere or prescribe any rule. These are to be controlled by the law of the church." And the conclusion to which he comes is thus stated: "That the control and possession of the church edifice upon Sundays, and at all times when open for divine services, appertains exclusively to the rector." I have no doubt with regard to the correctness of this view. By the English ecclesiastical law, which, although somewhat modified by new circumstances and by American usages and statutes, constitutes the substantial basis of the law controlling the affairs of this particular church, the possession of the church and churchyard is in the incumbent; nor does it make any difference in this respect in whose hands the title to the religious property is lodged, as for example, in case the freehold of the church and churchyard is in the rector, nevertheless, the curate will be deemed in possession for all ecclesiastical purposes. In exemplification of this rule, I refer to an interesting discussion of the question in *Greenslade* v. *Darby*, decided during the present year by the Court of Queen's Bench, Law Rep. 3 Q. B. 421. "I quite agree

with the former decisions." Such is the declaration of Chief Justice COCKBURN, that an incumbent has possession of the churchyard as well as of the church for all spiritual purposes; therefore for burials, and for all purposes attached to his office, he has undoubtedly uncontrolled possession of the churchyard. To the same purpose is the rule laid down by Cripps in his treatise on the Church and Clergy, page 158; See, also, 1 Burn's Ecclesiastical Law 377; *Stocks* v. *Booth*, 1 T. R. 428. If, then, we adopt this theory, and I perceive no reason for rejecting it, that for the purpose of the exercise of his sacerdotal functions the rector becomes possessed of the church buildings and grounds, it will be difficult to devise any pretext in denial of the right of such officer to a civil remedy if such possession be invaded. Nor does the right to redress for an interference with his rights, seem less clear, if we adopt the hypothesis, that by force of his position the plaintiff was possessed of an easement in these premises. Such a privilege would not be unlike in kind to a right to the occupation of a pew in a church; and of this latter right in the case of *The Presbyterian Church* v. *Andruss*, 1 Zabriskie 328, Chief Justice GREEN remarks, it "is an incorporeal hereditament. It is in the nature of an easement, a right or privilege in the lands of another. For an interruption of this right, an action on the case for a disturbance, as in other cases of injury to incorporeal hereditaments, is the only remedy." Regarding, then, the rector's interest in the church edifice as a mere right to enter and while there to discharge certain functions, I am unable to distinguish it, in its substantial essence, from the right of the pewholder. The right of the latter is obviously no more secular in its character than the former; both the pewholder and the minister attend to the end of religious worship and edification, and as the pewholder has a remedy at law for a disturbance of his privilege, it would seem to be preposterous to deny it to a minister for a like wrong. Upon principle then, I think, the present action is to be vindicated, and for a precedent I refer to the case of *Phillybrowne* v. *Ryland*, 8 Mod. 352, 2 Strange 624, in which it was decided that an action would lie on behalf of a parish over against the clerk of the vestry, for shutting the vestry-door and keeping the plaintiff out, so that he could not come in to vote, the rule of decision in this case appears to be indistinguishable from that which is called for by the one now before us.

Adopting, therefore, either of the views above indicated, viz., that the plaintiff was in possession, or that he had a right to enter on special occasions, the interference with either of such interests affords a right of suit; the mere fact that the form of action would be variant if we adopt one or the other theory, cannot affect this case on the present motion, as the real question in controversy between the parties has been tried, and consequently by force of the provision of our present Practice Act, the mode of suit is now alterable, so as to conform to the legal view which the court may adopt.

Influenced by these considerations, I have concluded that the plaintiff's right of action is sustained by the proofs in the case.

On the second head my judgment is also in favor of the plaintiff; the damages are undoubtedly large, but this question was left fairly to the jury, and there is no reason to suppose that they were in any respect subjected to any sinister influence. The defendants acted with great indiscretion; their conduct was oppressive, and whatever their intentions may have been, it was calculated to wound and injure the plaintiff.

The verdict should not be disturbed.

United States Circuit Court, Southern District of Georgia.

JOHN M. CUYLER *v.* JOHN C. FERRILL AND OTHERS.

A state court of Georgia during the late war had no jurisdiction to decree partition of lands in that state while one of the joint owners was a citizen and resident in one of the other states adhering to the Union.

The United States courts, therefore, will take cognisance of a bill for partition of such lands and disregard the previous judgment.

A purchaser at a judicial sale under the judgment of the state court who has paid only in Confederate notes cannot be regarded as a *bonâ fide* purchaser who has paid.

JOHN M. CUYLER, a citizen of Pennsylvania, filed his bill in chancery in this court for partition and relief against John C. Ferrill and others, citizens of Georgia.

Jeremiah Cuyler devised certain lots in Savannah to his daughters for and during their natural lives, and thereafter to his sons, John M. and Teleman Cuyler, their heirs and assigns. The bill set forth, that the life estate ceased in March 1863, and that the